

ZONING BOARD OF ADJUSTMENT
268B MAMMOTH ROAD
LONDONDERRY, NH 03053

DATE: JULY 15, 2015

CASE NO.: 8/20/2014-2 (CONTINUED)

APPLICANT: ROBERT CASEY
26 PINE STREET
LONDONDERRY, NH 03053

LOCATION: 26 PINE STREET; 3-70, AR-I

BOARD MEMBERS PRESENT: JIM SMITH, CHAIRMAN
JACKIE BENARD, VOTING MEMBER
JIM TIRABASSI, VOTING MEMBER
NEIL DUNN, VOTING MEMBER
BILL BERNADINO, NON-VOTING ALTERNATE
DAVID PAQUETTE, CLERK

ALSO PRESENT: RICHARD CANUEL, SENIOR BUILDING INSPECTOR/ZONING
ADMINISTRATOR/HEALTH OFFICER

REQUEST: RELIEF OF ADMINISTRATIVE DECISION IN ACCORDANCE WITH THE
PROVISIONS OF RSA 676:5.

PRESENTATION: D. PAQUETTE READ A LETTER INTO THE RECORD FROM ATTORNEY
BRUCE MARSHALL REQUESTING A FORMAL WITHDRAWAL (SEE EXHIBIT
H).

JIM SMITH: Okay, Richard do you have some comments?

RICHARD CANUEL: Well, we...if the Board recalls, last month's hearing the Board did vote to continue the hearing at the request of Mr. Casey's attorney to allow him opportunity to meet with me and discuss a possible resolution, so we have done that. Based on that resolution, the notice of violation has been rescinded, so there's no longer a need for Board action. If you'd like, I can go into some of the details? If that's relevant?

JIM SMITH: Well, if we were on the TV, I would say yes, but since were not. I don't think it would serve much purpose.

43 RICHARD CANUEL: I can state that details of the resolution was drafted up in agreement by Mr. Casey's
44 attorney and also in a response to his written agreement from my office, so those details are available for
45 review in the public record and at any time.

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47 JIM SMITH: Okay, good. Neal?

48
49 [Overlapping comments]

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51 BILL BERNADINO: I'm sorry, Mr. Chairman, we can't find out what the notice of violations were, or...? What
52 he has to do? Does...is there a timeline for him to do it in?

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54 RICHARD CANUEL: Like I say, if the Board likes, I can go into further details at this point?

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56 DEB BERNADINO: I would appreciate it.

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58 NEIL DUNN: Mr. Chairman, ...my point of...?

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60 DEB BERNADINO: I've been coming every month for a year now. I would like to know. Sorry.

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62 JIM SMITH: Okay, go ahead.

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64 NEIL DUNN: It would be in the minutes also for anybody to read.

65
66 [Overlapping comments]

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68 RICHARD CANUEL: ...Okay, good, yeah, yeah. I agree. As I said, Mr. Casey's attorney did meet with me, and
69 after negotiation, we finally did reach a resolution. The approach that I took was to address those activities
70 associated with the business use on that property that were creating a nuisance as associated to sight, sound,
71 noise and traffic. Among the complaints were the delivery of large signs and sign materials by eighteen
72 wheeler tractor trailers to the property on a regular basis. The other complaints had to do with the emptying
73 of a large commercial dumpster on early morning hours and the noise associated with that, and also the large
74 barn fires that Mr. Casey was conducting and burning his sign crates and other miscellaneous materials. So,
75 Mr. Casey has agreed to discontinue all deliveries to the property by eighteen wheel vehicles. Any large signs
76 that are to be used will be delivered directly to the job sight, or stored at some alternate location off site
77 from 26 Pine Street. He has also agreed to completely remove the large commercial dumpster from the
78 property. Thereby negating any noise associated with emptying that dumpster. Whatever burning will be
79 conducting on site will be in accordance with the Fire Department permitting protocol. So, I think we've
80 reached a solution based on those nuisance issues, and so as I said, notice of violation has been rescinded
81 and upon my direction to his legal counsel was to request withdrawal of the appeal. So that's where we're
82 at. Hopefully going forward, Mr. Casey will conduct himself in a manner that's decent to his neighbors so...

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84 BILL BERNADINO: I have questions. Bill Bernadino, 3 Fir Street, Londonderry, NH. There was a couple more
85 complaints on that. That as the abutter to Mr. Casey's property the heavy duty equipment being run, the

86 heavy duty sign equipment being parked at his yard illegally...anything happing there, or he can run his
87 business and his trucks out of his yard still?
88

89 RICHARD CANUEL: Well, the intent of the resolution is that he reduces his activities, so that it is not an
90 annoyance to his neighbors.
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92 BILL BERNADINO: Running deasil trucks getting up at five in the morning to start his work is an annoyance to
93 me who lives right directly behind him.
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95 RICHARD CANUEL: Well, like I said, I think I have an agreement with Mr. Casey. You know, he's certainly
96 amicable to reducing his activity there. He understands the nuisance that he has created to his neighbors,
97 and I think he's agreeable to behave himself. So, lets...
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99 BILL BERNADINO: Well, he can say that to you, but as we speak, he's still doing the same thing today.
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101 RICHARD CANUEL: Okay, well, all...
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103 BILL BERNADINO: Alright, and the complaint was mainly with the trucks. He gets up early in the morning. I
104 mean, you know, does he have a variance to run heavy equipment in there?
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106 RICHARD CANUEL: Well, no he doesn't.
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108 BILL BERNADINO: No, he doesn't.
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110 [Overlapping comments]
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112 DEB BERNADINO: He's allowed to run a business there?
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114 BILL BERNADINO: Is he allowed to run a business in the area in RSA 1?
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116 DEB BERNADINO: ...it's a small one?
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118 RICHARD CANUEL: Yeah, well...
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120 BILL BERNADINO: Well, these are questions that a year ago, if this went in front of the Board, they would
121 have been asked, but it seems like you back step and back door to deal with this gentleman because he's in
122 good faith. I won't do that again.
123

124 RICHARD CANUEL: ...that's...
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126 BILL BERNADINO : You got to know the person, and there is a complaint. You guys know him. You know
127 there's a business being run out of that property.
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129 RICHARD CANUEL: Of course.

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DEB BERNADINO: So, why are you allowing him to downsize his business as opposed to getting rid of it?

RICHARD CANUEL: Alright, okay...

JIM SMITH: Wait a minute. Wait a minute. I think...

[Overlapping comments]

RICHARD CANUEL: First of all, Mr. Chairman point of order.

JIM SMITH: Yeah.

RICHARD CANUEL: The appeal has been withdrawn.

JIM SMITH: Right.

RICHARD CANUEL: So there's no discussion.

JIM SMITH: Right.

[Overlapping comments]

JIM SMITH: Okay, wait a minute. Wait a minute.

RICHARD CANUEL: With respect to Mr. Bernadino, if he doesn't agree with my decision, he can follow the appeal process as well, and then we can settle it that way...

JACKIE BENARD: Okay.

RICHARD CANUEL: ...I don't know what else to say? You know, I've tried to work with this guy, so he can reduce the nuisance, so...

BILL BERNADINO: And I understand that Richard, and I know we've been going through this for a year after continuation...continuation after the Town legal department told us to run this case.

JIM SMITH: Okay...wait a minute...

BILL BERNADINO: His accusations that I'm talking to the membership about this case and everything. Now all of the sudden, it goes away.

RICHARD CANUEL: Again, again...

JIM SMITH: Bill...

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RICHARD CANUEL: ...the case is closed at this point.

JIM SMITH: Bill, the case is closed. If you've got further complaints and stuff you need to go through the process. This is not the forum for it at this point.

BILL BERNADINO: Okay, okay. I've got another question for you. You have in the minutes even if you withdraw the decisions all fines are held. Was the gentleman fined for all this...three hundred and sixty five days of a...

RICHARD CANUEL: No he has not because based on our agreement that resolution the notice of violation has been rescinded, so therefore all fines of course are rescinded.

BILL BERNADINO: Okay.

DEB BERNADINO: How do we file an appeal?

RICHARD CANUEL: Contact that young lady right there. She can give you all the necessary...

DEB BERNADINO: Okay, thank you.

RICHARD CANUEL: ...process to do that.

DEB BERNADINO: Thank you.

RICHARD CANUEL: And, if you want, you know, I'm available in my office...you guys want to sit down and discuss the details, I'd be glad to do that.

BILL BERNADINO: But, unfortunately it's going to go the same thing. We've already...you know...about the heavy duty equipment...

JIM SMITH: Okay.


BILL BERNADINO: ...and all that, and that's not even mentioned in your discussion, so guess what...

JIM SMITH: Bill...

BILL BERNADINO: ...he wins again.

JIM SMITH: Bill...

RICHARD CANUEL: Well, you know again, I have to take him at his word that he's going to tone things down, so it's...only time will tell.

218 BILL BERNADINO: Okay, so in other words, if it ain't at his word, I still complain about this.
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220 RICHARD CANUEL: Absolutely. Absolutely.
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222 BILL BERNADINO: Which brought me to the Zoning Board to begin with because I felt nothing right was being
223 done.
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225 RICHARD CANUEL: Yeah.
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227 BILL BERNADINO: So, it's going to be a constant in front of you...coming here...continuing again?
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229 RICHARD CANUEL: I don't know what else to tell you Bill?
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231 BILL BERNADINO: He's basically being allowed to run his business in an AR-I.
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233 RICHARD CANUEL: Yeah, well there's...
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235 BILL BERNADINO: Yeah...
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237 [Laughter]
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239 RICHARD CANUEL: Well, there's more...okay, alright...alright.
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241 BILL BERNADINO: Man...
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243 [Overlapping comments]
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245 JIM SMITH: Okay.
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247 BILL BERNADINO: ...before I get taken out in handcuffs.
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249 [Overlapping comments]
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251 JIM SMITH: Okay, that concludes the first case.
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253 **RESULTS:** Case No. 8/20/2014-2 was withdrawn.
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255 RESPECTFULLY SUBMITTED,
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258 DAVID PAQUETTE, CLERK
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260 TYPED AND TRANSCRIBED BY NICOLE DOOLAN, PLANNING & ECONOMIC DEVELOPMENT DEPARTMENT
261 SECRETARY.

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APPROVED (AUGUST 19, 2015) WITH A MOTION MADE BY N. DUNN, SECONDED BY J. BENARD AND APPROVED 5-0-0.

EXHIBIT H

D'AMANTE COUSER PELLERIN & ASSOCIATES, P.A.

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RAYMOND P. D'AMANTE *
BRYAN L. PELLERIN **
BRUCE J. MARSHALL
STEVEN A. SOLOMON

RICHARD B. COUSER (1941-2008)

* ALSO ADMITTED IN NY AND CA
** ALSO ADMITTED IN MA

July 13, 2015

Via Fax (603-432-1128)
Town of Londonderry Zoning Board of Adjustment
268B Mammoth Road
Londonderry, NH 03053
Attention: Zoning Board

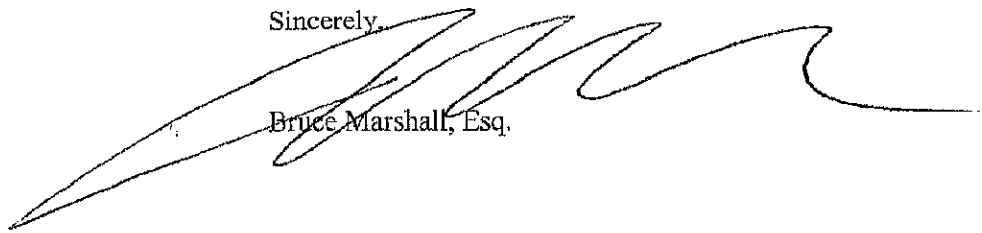
RE: Robert Casey/26 Pine Street Londonderry, NH 03053

Dear Board:

My client and I have met with Richard Canuel, Senior Building Inspector, in an attempt to reach an amicable resolution that would moot the need for further consideration by the Zoning Board. As a result, the subject Notice of Violation has been resolved directly with the code enforcement officer. The current status of the Notice of Violation, which was the basis of the subject appeal, is that it has been rescinded. Therefore, please accept this correspondence as my client's formal withdrawal of the subject appeal as it is no longer necessary.

Thank you for your time and consideration in allowing this matter to be resolved amicably. As always if you have any questions or if further information is required please do not hesitate to call.

Sincerely,



Bruce Marshall, Esq.

cc: Client
Richard Canuel